WOMBLE BOND DICKINSON

September 19, 2019

Via ECFS and Hand Delivery
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Request for Confidential Treatment of Sensitive Financial Information for BTC, Inc. d/b/a Western Iowa Networks, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155

Womble Bond Dickinson (US) LLP

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Dear Ms. Dortch:

Pursuant to Sections 0.457 and 1.1206(b)(2)(ii) of the Commission's rules, 47 C.F.R. §§ 0.459, 1.1206(b)(2)(ii), BTC, Inc. d/b/a Western Iowa Networks ("BTC"), by its attorneys, respectfully requests that certain information included in the Declaration of Kevin Skinner on Behalf of BTC, Inc. d/b/a Western Iowa Networks (the "Declaration") be withheld from public inspection. This Declaration was submitted with the September 19, 2019 Notice of *Ex Parte* filed by BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communication Corporation, Northern Valley Communications, LLC, OmniTel Communications, Louisa Communications, No Cost Conferencing, Inc., Total Bridge, Inc., and Sipmeeting, LLC ("September 19 CLEC *Ex Parte* Notice") in the above-referenced docket.

Specifically, BTC requests that the Commission withhold from any future public inspection and afford confidential treatment to certain portions of the Declaration that relate to BTC's profits for the period January 1, 2019, to August 31, 2019 and to BTC's estimated losses for the period January 1, 2019, to August 31, 2019, if the Draft Order's proposed rules were effective in 2019. This confidential information, which has been redacted from the publicly available version of the Declaration, constitutes sensitive commercial information that falls within Exemption 4 of the Freedom of Information Act ("FOIA"). Exemption 4 of FOIA provides that the public disclosure requirement of the statute "does not apply to … trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4).

In support of its request for confidential treatment and pursuant to the requirements under Section 0.459(b) of the Commission's rules, 47 C.F.R. § 0.459(b), BTC states the following:

1. Identification of the Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))

BTC seeks confidential treatment of financial information contained in paragraphs 6 and 8 of the Declaration of Kevin Skinner on Behalf of BTC, Inc. d/b/a Western Iowa Networks, which was submitted alongside the September 19 CLEC *Ex Parte* Notice. This information, and only this information, has been redacted from the publicly available version of the Declaration.

2. Identification of the Commission Proceeding in Which the Information was Submitted or A Description of the Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

BTC is submitting the information covered by this request as part of the Declaration submitted alongside and in support of the September 19 CLEC *Ex Parte* Notice filed in WC Docket No. 18-155, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*. In this proceeding, on September 5, 2019, the Commission released for circulation a draft Report and Order and Modification of Section 214 Authorizations (the "Draft Order") to be considered at its September 26, 2019 Open Meeting. To address BTC's concerns with the Draft Order and to establish its concerns about the financial impacts the Draft Order would have on BTC's business if adopted, BTC submitted the information covered by this request.

3. Explanation of the Degree to Which the Information is Commercial or Financial, or Contains A Trade Secret or Is Privileged (Section 0.459(b)(3))

The information covered by this request is protected from disclosure because it contains the sensitive and confidential commercial and financial information of BTC.

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))

The information covered by this request contains information regarding BTC's profits for the period January 1, 2019, to August 31, 2019, and information regarding BTC's estimated losses for the period January 1, 2019, to August 31, 2019, if the Draft Order's proposed rules were effective in 2019 (this estimate is based on BTC's existing traffic volumes and rates for the period referenced). BTC is not a publicly-traded company and it maintains information regarding its financials as confidential and not available for public disclosure. Moreover, BTC, as a competitive local exchange carrier, must compete with other local exchange carriers for business in Iowa, and if other carriers were to have access to BTC's current financial information it could negatively affect BTC's competitive position.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))

Disclosure of the information covered by this request would provide competitors with insights into the company's current financial strength, including the likely impact that the Draft Order would have on

its finances, and could compromise its position in business negotiations with third parties going forward. This would harm BTC's overall competitive position and work to its substantial competitive disadvantage.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

BTC keeps the information covered by this request strictly confidential. BTC only shares the information with counsel, board members, and a limited number of employees. BTC does not share this information with non-essential personnel without entering into a non-disclosure agreement with the company.

7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))

The information covered by this request has not been made publicly available and it has not previously been disclosed to any third parties.

8. Justification of the Period During Which the Submitting Party Asserts that Material Should Not Be Available for Public Disclosure (Section 0.459(b)(8))

The information covered by this request should be treated as confidential for an indefinite period, as there are substantial competitive harms associated with the disclosure of the confidential information.

* * * * *

Please direct any questions concerning this request to the undersigned.

Respectfully submitted

David Carter

Counsel to BTC, Inc. d/b/a Western Iowa Networks

Enclosure

Declaration of Kevin Skinner

On behalf of BTC, Inc. d/b/a Western Iowa Networks

I, Kevin Skinner, declare under oath and state as follows:

1. I am the Chief Financial Officer of BTC, Inc. d/b/a Western Iowa Networks ("BTC"), a CLEC in Iowa.

2. For many years, BTC has provided services to free conference calling and similar voice services and has provided revenue sharing in order to attract and retain those high volume customers and to provide advanced telecommunications to the citizens and businesses of its local community in Carroll, Iowa.

3. BTC has invested millions of dollars in building and regularly upgrading a sophisticated high-capacity network capable of handling and switching these significant traffic volumes.

4. Moreover, BTC has used its revenues from access stimulation and other services to invest millions of dollars in the Carroll community, providing advanced fiber-to-the-home facilities for voice, broadband, and TV service at gigabit speeds that compete with those offered by Mediacom Communications Corporation and CenturyLink, all without the benefit of any federal subsidies.

5. In response to the FCC's 2011 *Connect America Fund Order*, BTC reduced its tariffed access rates as required by that order.

6. Based on my review of BTC's financial information for the year to date, BTC is a profitable company with a pre-tax net income of approximately [redacted]

7. Based on my review of financial information for the year to date, if the FCC adopts the draft *Report and Order and Modification of Section 214 Authorizations* that it released

REDACTED FOR PUBLIC INSPECTION

on September 5, 2019, in WC Docket No. 18-155, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage* (the "Draft Order"), I anticipate that BTC will immediately become unprofitable because it will not only lose all access revenues it has historically relied upon, but will also incur the expense of providing tandem switching and transport services for the benefit of the IXCs.

8. Based on existing traffic volumes and rates, I estimate that, had these rules been effective in 2019, rather than making a profit, BTC would have suffered a [redacted] loss.

9. In short, the rules proposed in the Draft Order would be financially ruinous and totally eviscerate BTC as a company if it continues to provide service to high volume customers, even if BTC has no revenue sharing relationships.

10. The Commission's alternative suggestion that high volume service providers start paying not only for the end user telecommunication services they obtain, but also the costs of providing tandem switching and transport, is unreasonable. These service providers will not pay rural LECs for these services, but instead will migrate to larger LECs that can continue to engage in revenue sharing because they have higher volumes of originating traffic and thus would not trigger the originating-to-terminating traffic ratios in the rules. In other words, the Commission's Draft Order would eviscerate an entire line of business for BTC while allowing other LECs located in more urban areas to continue providing an identical service for a profit.

11. The proposed rules will severely harm BTC even if BTC discontinues service to high volume customers. It is my understanding that the proposed rules will become effective 45 days after publication in the *Federal Register*, but that a carrier will still be considered an access stimulator, and thus required to pay for the IXC's tandem switching and transport services, until

it has demonstrated reduced traffic volumes (below the 6:1 originating-to-terminating ratio) for a period of six months. As such, even if BTC immediately disconnects all high volume service providers, it would still be required to incur the expense of tandem switching and termination on traffic terminating to its residential and business customers for a period of at least six months. Thus, during this period, BTC would be deprived of its primary revenue source and required to bear a new burden in the form of obtaining and paying for tandem switching and transport services. The result is that BTC would have to charge an unreasonably high and non-competitive rate to its customers or incur a loss for a period of not less than six months.

12. The proposed rules would also likely subject BTC to repetitive disputes and nonpayment scenarios even if BTC does not violate the proposed 6:1 originating-to-terminating ratio. According to the Draft Order, the Commission will "encourage [IXC] self-policing of our access stimulation definition and rules" and will allow IXCs to issue disputes to carriers based on the originating and terminating traffic data available to them.[1] Historically, BTC has sent the majority of its originating traffic to only one carrier: CenturyLink. Thus, no other IXC would have any basis to understand BTC's originating-to-terminating ratio. However, due to the Commission's encouragement of self-policing by the IXCs, other carriers will still be able to dispute BTC's ratio based on their skewed data and BTC will have no choice but to spend the time and money to defend those actions, forcing it to endure even more financial hardship.

13. Moreover, the Commission's other suggestion that its "high cost universal service program provides support to carriers in rural, insular, and high cost areas as necessary to ensure

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[1] *In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, at 21 ¶ 51 (circulated Sept. 5, 2019) ("Draft Order").

that consumers in such areas pay rates that are reasonably comparable to rates in urban areas,"[2] would not mitigate these consequences because BTC is a CLEC and the Commission has made CLECs ineligible for this support.[3]

14. Given the costs of providing service in rural areas, and the fact that BTC would never be able to compete for *any* high volume customers in the future – including call centers or other businesses that are physically located in BTC's service territory but that generate high volumes of in-bound calls – without being concerned that it would trigger the access stimulation rules, I do not believe that BTC will ever be able to take advantage of new business opportunities, nor do I believe that BTC will be able to recover from the Commission's rules or run a profitable business. As explained below, this will not only negatively harm BTC and its employees, but also numerous Iowa communities.

15. For example, due to tax incentive programs adopted by the State of Iowa, companies like Apple, Facebook, and Microsoft have recently turned their attention to the Midwest as the possible location for new call centers. Indeed, Aureon has developed specific

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2 Draft Order at 12 ¶ 29.

3 *See In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, at 17-18 (July 20, 2018) (noting that "[u]nlike the ILECs, [] CLECs were never given access to the cost-recovery mechanisms created in the *Connect America Fund Order*" as "the Commission told the CLECs to fend for themselves"); *see also In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, ¶ 864 (2011) ("We decline to provide an explicit recovery mechanism for competitive LECs. Unlike incumbent LECs, because competitive carriers have generally been found to lack market power in the provision of telecommunications services, their end-user charges are not subject to comparable rate regulation, and therefore those carriers are free to recover reduced access revenue through regular end-user charges. Some competitive LECs have argued that their rates are constrained by incumbent LEC rates (as supplemented by regulated end-user charges and CAF support); to the extent this is true, we would expect this competition to constrain incumbent LECs' ability to rely on end-user recovery as well. Moreover, competitive LECs typically have not built out their networks subject to COLR obligations requiring the provision of service when no other provider will do so, and thus typically can elect whether to enter a service area and/or to serve particular classes of customers (such as residential customers) depending upon whether it is profitable to do so without subsidy.").

product offerings to help encourage call centers to move to rural communities in Iowa.[4] If the Draft Order is implemented, however, BTC and other rural LECs could not pursue these economic development opportunities because of the risk that the addition of this incoming traffic would cause it to exceed the 6:1 originating-to-terminating ratio, even if BTC otherwise discontinued providing service to free conference calling providers and had no revenue sharing agreements. BTC should not have to decline these business opportunities, nor should call centers locating in rural areas be left with only a single choice for their telecommunications services. That is the most likely outcome, however, if the Commission adopts the Draft Order.

16. Moreover, immediately terminating all traffic to free conference calling and similar services would be highly disruptive for the millions of Americans that rely on these services. The Commission's insistence on implementing its new rules in a period of 45 days provides no opportunity for BTC and its customers to implement a reasonable transition plan.

I declare under penalty of perjury that the foregoing is truthful and correct to the best of my knowledge, information, and belief.

Dated: September 18, 2019

Kevin Skinner

[4] *See, e.g.,* AUREON, *Call Center Solutions*, available at: https://www.aureon.com/services/customer-service/call-center/.

WOMBLE BOND DICKINSON

September 19, 2019

Via ECFS and Hand Delivery
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Request for Confidential Treatment of Sensitive Financial Information for Great Lakes Communication Corporation, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155

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Dear Ms. Dortch:

Pursuant to Sections 0.457 and 1.1206(b)(2)(ii) of the Commission's rules, 47 C.F.R. §§ 0.459, 1.1206(b)(2)(ii), Great Lakes Communication Corporation ("GLCC"), by its attorneys, respectfully requests that certain information included in the Declaration of Joshua Dean Nelson on Behalf of Great Lakes Communication Corporation (the "Declaration") be withheld from public inspection. This Declaration was submitted with the September 19, 2019 Notice of *Ex Parte* filed by BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communication Corporation, Northern Valley Communications, LLC, OmniTel Communications, Louisa Communications, No Cost Conferencing, Inc., Total Bridge, Inc., and Sipmeeting, LLC ("September 19 CLEC *Ex Parte* Notice") in the above-referenced docket.

Specifically, GLCC requests that the Commission withhold from any future public inspection and afford confidential treatment to certain portions of the Declaration that relate to GLCC's profits for the period January 1, 2019, to August 31, 2019 and to GLCC's estimated losses for the period January 1, 2019, to August 31, 2019, if the Draft Order's proposed rules were effective in 2019. This confidential information, which has been redacted from the publicly available version of the Declaration, constitutes sensitive commercial information that falls within Exemption 4 of the Freedom of Information Act ("FOIA"). Exemption 4 of FOIA provides that the public disclosure requirement of the statute "does not apply to … trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4).

In support of its request for confidential treatment and pursuant to the requirements under Section 0.459(b) of the Commission's rules, 47 C.F.R. § 0.459(b), GLCC states the following:

1. Identification of the Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))

GLCC seeks confidential treatment of financial information contained in paragraphs 5 and 7 of the Declaration of Joshua Dean Nelson on Behalf of Great Lakes Communications Corporation, which was submitted alongside the September 19 CLEC *Ex Parte* Notice. This information, and only this information, has been redacted from the publicly available version of the Declaration.

2. Identification of the Commission Proceeding in Which the Information was Submitted or A Description of the Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

GLCC is submitting the information covered by this request as part of the Declaration submitted alongside and in support of the September 19 CLEC *Ex Parte* Notice filed in WC Docket No. 18-155, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*. In this proceeding, on September 5, 2019, the Commission released for circulation a draft Report and Order and Modification of Section 214 Authorizations (the "Draft Order") to be considered at its September 26, 2019 Open Meeting. To address GLCC's concerns with the Draft Order and to establish its concerns about the financial impacts the Draft Order would have on GLCC's business if adopted, GLCC submitted the information covered by this request.

3. Explanation of the Degree to Which the Information is Commercial or Financial, or Contains A Trade Secret or Is Privileged (Section 0.459(b)(3))

The information covered by this request is protected from disclosure because it contains the sensitive and confidential commercial and financial information of GLCC.

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))

The information covered by this request contains information regarding GLCC's profits for the period January 1, 2019, to August 31, 2019, and information regarding GLCC's estimated losses for the period January 1, 2019, to August 31, 2019, if the Draft Order's proposed rules were effective in 2019 (this estimate is based on GLCC's existing traffic volumes and rates for the period referenced). GLCC is not a publicly-traded company and it maintains information regarding its financials as confidential and not available for public disclosure. Moreover, GLCC, as a competitive local exchange carrier, must compete with other local exchange carriers for business in Northwestern Iowa, and if other carriers were to have access to GLCC's current financial information it could negatively affect GLCC's competitive position.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))

Disclosure of the information covered by this request would provide competitors with insights into the company's current financial strength, including the likely impact that the Draft Order would have on its finances, and could compromise its position in business negotiations with third parties going forward.

This would harm GLCC's overall competitive position and work to its substantial competitive disadvantage.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

GLCC keeps the information covered by this request strictly confidential. GLCC only shares the information with counsel, board members, and a limited number of employees. GLCC does not share this information with non-essential personnel without entering into a non-disclosure agreement with the company.

7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))

The information covered by this request has not been made publicly available and it has not previously been disclosed to any third parties.

8. Justification of the Period During Which the Submitting Party Asserts that Material Should Not Be Available for Public Disclosure (Section 0.459(b)(8))

The information covered by this request should be treated as confidential for an indefinite period, as there are substantial competitive harms associated with the disclosure of the confidential information.

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Please direct any questions concerning this request to the undersigned.

Respectfully submitted

David Carter

Counsel to Great Lakes Communication Corporation.

Enclosure

Declaration of Joshua Dean Nelson

On behalf of Great Lakes Communication Corporation

I, Joshua Dean Nelson, declare under oath and state as follows:

1. I am the founder and CEO of Great Lakes Communication Corporation ("GLCC"), a CLEC in Northwestern Iowa.

2. Since its founding, GLCC has provided services to free conference calling and similar voice services customers and has provided revenue sharing in order to attract and retain those high volume customers.

3. GLCC has invested millions of dollars in building and regularly upgrading a sophisticated high-capacity network capable of handling and switching these significant traffic volumes.

4. In response to the FCC's 2011 *Connect America Fund Order*, GLCC reduced its tariffed access rates as required by that order.

5. Based on my review of GLCC financial information for the year to date, GLCC is a profitable company with a pre-tax net income of [redacted] through August 31, 2019.

6. Based on my review of financial information for the year to date, if the FCC adopts the draft *Report and Order and Modification of Section 214 Authorizations* that it released on September 5, 2019 in *In re: Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155 ("Draft Order"), GLCC will immediately become unprofitable because it will not only lose all access revenues that it has historically relied upon, but it will also become financially responsible for and obligated to provide tandem switching and transport services for the benefit of the IXCs. Thus, the order will have more than double the impact on GLCC as what the Commission originally proposed in the NPRM.

7. Based on existing traffic volumes and rates, I estimate that had these rules been effective in 2019, GLCC would have suffered a loss of more than [redacted] for the period of January – August 2019, rather than making a [redacted] profit during that same time period.

8. In short, the rules proposed in the Draft Order would be financially ruinous and wipe out Great Lakes as a company if it continues to provide service to high volume customers, even if GLCC has no revenue to share.

9. The Commission's alternative suggestion that those high volume service providers start paying not only for the end user telecommunication services they obtain, but also the costs of providing tandem switching and transport, is unreasonable. These service providers will not pay rural LECs for these services, but instead will migrate to larger LECs that can continue to engage in revenue sharing because they have higher volumes of originating traffic and thus would not trigger the originating-to-terminating traffic ratios in the rules. In other words, the Commission's Draft Order would eviscerate an entire line of business for GLCC while allowing other LECs located in more urban areas to continue providing an identical service for a profit.

10. The proposed rules will severely harm GLCC even if GLCC discontinues service to high volume customers immediately. My understanding is that the proposed rules will become effective 45 days after publication in the Federal Register, but that a carrier will still be considered an access stimulator, and thus required to pay for the IXC's tandem switching and transport services, until it has demonstrated reduced traffic volumes (below the 6:1 originating-to-terminating ratio) for a period of six months. As such, even if GLCC immediately disconnects all high volume service providers, it would still be required to incur the expense of tandem switching and termination on traffic terminating to its residential and business customers for a period of at least six months. During this period, GLCC would be deprived of its primary revenue source and required to bear a new burden in the form of obtaining and paying for tandem switching and transport services. The result is that GLCC would have to charge an

unreasonably high and non-competitive rate to its residential and business customers in Northwest Iowa or incur a loss for a period of not less than six months.

11. Moreover, the Commission's other suggestion that its "high cost universal service program provides support to rural, insular, and high cost areas by as necessary to ensure that consumers in such areas pay rates that are reasonably comparable to rates in urban areas,"[1] would not mitigate these consequences because GLCC is a CLEC and the Commission has made CLECs ineligible for this support.[2]

12. Given the costs of providing service in rural areas, and the fact that GLCC would never be able to compete for *any* high volume customers in the future – including call centers or other businesses that are physically located in GLCC's service territory but generate high volumes of in-bound calls - without being concerned that it would trigger the access stimulation rules, I do not believe that GLCC will ever be able to recover from the impact of the Commission's rules and run a profitable business if these rules become effective.

13. Moreover, immediately terminating all traffic to free conference calling and similar services would be highly disruptive for the millions of Americans that rely on these services. The Commission's insistence on implementing its new rules in a period of 45 days provides no opportunity for GLCC and its customers to develop and execute a reasonable transition plan.

I declare under the penalty of perjury that the foregoing is truthful and correct to the best of my knowledge, information, and belief.

Dated: September 17, 2019

Joshua Dean Nelson

1 Draft Order, ¶ 29.

2 *See Connect America Fund Order* ¶ 864 ("We decline to provide an explicit recovery mechanism for competitive LECs.").

WOMBLE BOND DICKINSON

September 19, 2019

Via ECFS and Hand Delivery
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Request for Confidential Treatment of Sensitive Financial Information for Northern Valley Communications, LLC, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155

Womble Bond Dickinson (US) LLP

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David Carter
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Dear Ms. Dortch:

Pursuant to Sections 0.457 and 1.1206(b)(2)(ii) of the Commission's rules, 47 C.F.R. §§ 0.459, 1.1206(b)(2)(ii), Northern Valley Communications, LLC ("NVC"), by its attorneys, respectfully requests that certain information included in the Declaration of James Groft on Behalf of Northern Valley Communications, LLC (the "Declaration") be withheld from public inspection. This Declaration was submitted with the September 19, 2019 Notice of *Ex Parte* filed by BTC, Inc. d/b/a Western Iowa Networks, Goldfield Access Network, Great Lakes Communication Corporation, Northern Valley Communications, LLC, OmniTel Communications, Louisa Communications, No Cost Conferencing, Inc., Total Bridge, Inc., and Sipmeeting, LLC ("September 19 CLEC *Ex Parte* Notice") in the above-referenced docket.

Specifically, NVC requests that the Commission withhold from any future public inspection and afford confidential treatment to certain portions of the Declaration that relate to NVC's current financial position for the period January 1, 2019, to August 31, 2019; NVC's estimated losses for the period January 1, 2019, to August 31, 2019, if the Draft Order's proposed rules were effective in 2019; and information regarding NVC's broadband customer base and NVC's business contracts and relationships with named third parties. This confidential information, which has been redacted from the publicly available version of the Declaration, constitutes sensitive commercial information that falls within Exemption 4 of the Freedom of Information Act ("FOIA"). Exemption 4 of FOIA provides that the public disclosure requirement of the statute "does not apply to … trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4).

In support of its request for confidential treatment and pursuant to the requirements under Section 0.459(b) of the Commission's rules, 47 C.F.R. § 0.459(b), NVC states the following:

1. Identification of the Specific Information for Which Confidential Treatment is Sought (Section 0.459(b)(1))

NVC seeks confidential treatment of commercial and/or financial information contained in paragraphs 5, 7, and 9 of the Declaration of James Groft on Behalf of Northern Valley Communications, LLC, which was submitted alongside the September 19 CLEC *Ex Parte* Notice. This information, and only this information, has been redacted from the publicly available version of the Declaration.

2. Identification of the Commission Proceeding in Which the Information was Submitted or A Description of the Circumstances Giving Rise to the Submission (Section 0.459(b)(2))

NVC is submitting the information covered by this request as part of the Declaration submitted alongside and in support of the September 19 CLEC *Ex Parte* Notice filed in WC Docket No. 18-155, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*. In this proceeding, on September 5, 2019, the Commission released for circulation a draft Report and Order and Modification of Section 214 Authorizations (the "Draft Order") to be considered at its September 26, 2019 Open Meeting. To address NVC's concerns with the Draft Order and to establish its concerns about the financial impacts the Draft Order would have on NVC's business, business dealings, and subscriber base if adopted, NVC submitted the information covered by this request.

3. Explanation of the Degree to Which the Information is Commercial or Financial, or Contains A Trade Secret or Is Privileged (Section 0.459(b)(3))

The information covered by this request is protected from disclosure because it contains the sensitive and confidential commercial and financial information of NVC.

4. Explanation of the Degree to Which the Information Concerns a Service that Is Subject to Competition (Section 0.459(b)(4))

The information covered by this request contains information regarding NVC's current financial position for the period January 1, 2019, to August 31, 2019; information regarding NVC's estimated losses for the period January 1, 2019, to August 31, 2019, if the Draft Order's proposed rules were effective in 2019 (this estimate is based on NVC's existing traffic volumes and rates for the period referenced); and information regarding NVC's broadband customer base and NVC's business contracts and relationships with named third parties. NVC is not a publicly-traded company and it maintains information regarding its financials, business dealings, and subscriber base as confidential and not available for public disclosure. Moreover, NVC, as a competitive local exchange carrier, must compete with other local exchange carriers for business in South Dakota, and if other carriers were to have access to NVC's current commercial and financial information it could negatively affect NVC's competitive position.

5. Explanation of How Disclosure of the Information Could Result in Substantial Competitive Harm (Section 0.459(b)(5))

Disclosure of the information covered by this request would provide competitors with insights into the company's current financial strength and business dealings, including the likely impact that the Draft Order would have on its finances, and could compromise its position in business negotiations with third parties going forward. This would harm NVC's overall competitive position and work to its substantial competitive disadvantage.

6. Identification of Any Measures Taken to Prevent Unauthorized Disclosure (Section 0.459(b)(6))

NVC keeps the information covered by this request strictly confidential. NVC only shares the information with counsel, board members, and a limited number of employees. NVC does not share this information with non-essential personnel without entering into a non-disclosure agreement with the company.

7. Identification of Whether the Information Is Available to the Public and the Extent of Any Previous Disclosure of the Information to Third Parties (Section 0.459(b)(7))

The information covered by this request has not been made publicly available and it has not previously been disclosed to any third parties.

8. Justification of the Period During Which the Submitting Party Asserts that Material Should Not Be Available for Public Disclosure (Section 0.459(b)(8))

The information covered by this request should be treated as confidential for an indefinite period, as there are substantial competitive harms associated with the disclosure of the confidential information.

* * * * *

Please direct any questions concerning this request to the undersigned.

Respectfully submitted

David Carter

Counsel to Northern Valley Communications, LLC

Enclosure

Declaration of James Groft

On behalf of Northern Valley Communications, LLC

I, James Groft, declare under oath and state as follows:

1. I am the Chief Executive Officer of Northern Valley Communications, LLC ("NVC"), a CLEC in South Dakota.

2. For many years, NVC has provided services to free conference calling and similar voice services and has provided revenue sharing in order to attract and retain those high volume customers.

3. NVC has invested millions of dollars in building and regularly upgrading a sophisticated high-capacity network capable of handling and switching these significant traffic volumes.

4. In response to the FCC's 2011 *Connect America Fund Order*, NVC reduced its tariffed access rates as required by that order.

5. Based on my review of NVC financial information for the year to date, NVC [redacted] This shows that the current access stimulation rules do not produce windfall profits for rural CLECs and that companies like NVC may be in jeopardy if they are deprived of competing for high volume customers that help to absorb the costs associated with maintaining modern telecommunications networks in rural areas.

6. Based on my review of financial information for the year to date, if the FCC adopts the draft *Report and Order and Modification of Section 214 Authorizations* that it released on September 5, 2019, in WC Docket No. 18-155, *In the Matter of Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage* (the "Draft Order"), I anticipate that NVC will immediately become unprofitable because it will not only lose all access revenues it has

historically relied upon, but will also incur the expense of providing tandem switching and transport services for the benefit of the IXCs.

7. Based on existing traffic volumes and rates, I estimate that, had these rules been effective in 2019, NVC would have suffered a [redacted] loss.

8. In short, the rules proposed in the Draft Order will be financially ruinous and will wipe out NVC as a company if it continues to provide service to high volume customers, even if NVC has no revenue sharing relationships.

9. In turn, if NVC is financially ruined, its community, that community's citizens, and third parties will also suffer. [redacted] NVC's destruction, which would result from the drastic increase in costs and reduction in revenue in such a short time frame, would imperil all of these other important community services.

10. The Commission's alternative suggestion that high volume service providers start paying not only for the end user telecommunication services they obtain, but also the costs of providing tandem switching and transport, is unreasonable. These service providers will not pay

rural LECs for these services, but instead will migrate to larger LECs that can continue to engage in revenue sharing because they have higher volumes of originating traffic and thus would not trigger the originating-to-terminating traffic ratios in the rules. In other words, the Commission's Draft Order would eviscerate an entire line of business for NVC while allowing other LECs located in more urban areas to continue providing an identical service for a profit.

11. The proposed rules will severely harm NVC even if NVC discontinues service to high volume customers. My understanding is that the proposed rules will become effective 45 days after publication in the *Federal Register*, but that a carrier will still be considered an access stimulator, and thus required to pay for the IXC's tandem switching and transport services, until it has demonstrated reduced traffic volumes (below the 6:1 originating-to-terminating ratio) for a period of six months. As such, even if NVC immediately disconnects all high volume service providers, it would still be required to incur the expense of tandem switching and termination on traffic terminating to its residential and business customers for a period of at least six months. Thus, during this period, NVC would be deprived of its primary revenue source and required to bear a new burden in the form of obtaining and paying for tandem switching and transport services. The result is that NVC would have to charge an unreasonably high and non-competitive rate to its customers or incur a loss for a period of not less than six months.

12. Moreover, the Commission's suggestion that its "high cost universal service program provides support to carriers in rural, insular, and high cost areas as necessary to ensure that consumers in such areas pay rates that are reasonably comparable to rates in urban areas,"[1]

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[1] *In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Report and Order and Modification of Section 214 Authorizations, at 12 ¶ 29 (circulated Sept. 5, 2019).

would not mitigate these consequences because NVC is a CLEC and the Commission has made CLECs ineligible for this support.[2]

13. Given the costs of providing service in rural areas, and the fact that NVC would never be able to compete for *any* high volume customers in the future – including call centers or other businesses that are physically located in NVC's service territory but that generate high volumes of in-bound calls – without being concerned that it would trigger the access stimulation rules, I do not believe that NVC will ever be able to recover from the Commission's rules, nor do I believe NVC will be able to run a profitable business.

14. Moreover, immediately terminating all traffic to free conference calling and similar services would be highly disruptive for the millions of Americans that rely on these services. The Commission's insistence on implementing its new rules in a period of 45 days provides no opportunity for NVC and its customers to implement a reasonable transition plan.

I declare under penalty of perjury that the foregoing is truthful and correct to the best of my knowledge, information, and belief.

Dated: September 19, 2019

James Groft

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[2] *See In re Updating the Intercarrier Compensation Regime to Eliminate Access Arbitrage*, WC Docket No. 18-155, Notice of Proposed Rulemaking, at 17-18 (July 20, 2018) (noting that "[u]nlike the ILECs, [] CLECs were never given access to the cost-recovery mechanisms created in the *Connect America Fund Order*" as "the Commission told the CLECs to fend for themselves"); *see also In re Connect America Fund*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 17663, ¶ 864 (2011) ("We decline to provide an explicit recovery mechanism for competitive LECs. Unlike incumbent LECs, because competitive carriers have generally been found to lack market power in the provision of telecommunications services, their end-user charges are not subject to comparable rate regulation, and therefore those carriers are free to recover reduced access revenue through regular end-user charges. Some competitive LECs have argued that their rates are constrained by incumbent LEC rates (as supplemented by regulated end-user charges and CAF support); to the extent this is true, we would expect this competition to constrain incumbent LECs' ability to rely on end-user recovery as well. Moreover, competitive LECs typically have not built out their networks subject to COLR obligations requiring the provision of service when no other provider will do so, and thus typically can elect whether to enter a service area and/or to serve particular classes of customers (such as residential customers) depending upon whether it is profitable to do so without subsidy.").